

AS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-075-C - ORDER NO. 97-371
MAY 2, 1997

IN RE: Application of VYVX, Inc. for a Certifi-) ORDER
cate of Public Convenience and Necessity) APPROVING
to Provide Intrastate Telecommunications) CERTIFICATE
Services within the State of)
South Carolina.)

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Vyvx, Inc. ("Vyvx" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate telecommunications services within South Carolina and to construct fiber optic telecommunications facilities within South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1996) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Vyvx to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Vyvx's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Vyvx complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to

Intervene were received concerning Vyvx's Application.

A hearing was commenced on April 17, 1997, at 11:30 a.m., in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. Vyvx was represented by Frank R. Ellerbe, III, Esquire. Florence P. Belser, Staff Counsel, represented the Commission Staff.

Joseph W. Miller appeared and offered testimony in support of Vyvx's Application. Mr. Miller is a Senior Attorney with The Williams Companies. The record reveals that Vyvx is a wholly owned subsidiary of Williams Communications Group, Inc., which is, in turn, a wholly owned subsidiary of Williams Holdings of Delaware, Inc. The Williams Companies, Inc., is a publicly traded company which owns 100 percent of Williams Holdings of Delaware, Inc. Vyvx is a Delaware corporation and is authorized to transact business in South Carolina as a foreign corporation by the South Carolina Secretary of State.

According to Mr. Miller, Vyvx provides private line telephone services that are designed and used to support video transmissions. Mr. Miller testified that Vyvx primarily uses an 11,000-mile nationwide fiber optic network, supplemented by satellite facilities and microwave links, to provide its services. Vyvx also has fiber optic facilities in eastern South Carolina that it uses to provide interstate services. Additionally, Mr. Miller stated that Vyvx plans to construct new fiber optic facilities from a point near Houston, Texas, to a point in Virginia near Washington, D.C., and that the project will extend

through Anderson, Greenville, Laurens, Spartanburg, and Cherokee Counties in South Carolina.

Mr. Miller explained the Company's services, operations and marketing procedures. Mr. Miller also explained that Vyvx possesses the technical, financial and managerial abilities to provide its services in South Carolina. Mr. Miller testified that the Company would operate in accordance with the Commission rules, regulations, guidelines, and prior Commission Orders. Finally, counsel for Vyvx stated that Vyvx agreed to make certain changes to its proposed tariff as suggested by the Commission Staff.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Vyvx is organized as a corporation under the laws of the State of Delaware and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. Vyvx provides private line telecommunications services through its own facilities or through the resale of service provided by unaffiliated companies and wishes to provide its services in South Carolina.

3. Vyvx has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Vyvx (1) to provide intrastate facilities based telecommunications services in South Carolina and (2) to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for Vyvx for its facilities-based and resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Vyvx shall not adjust its rates below the approved maximum level without notice to the Commission and to the public. Vyvx shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore

not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1996).

4. If it has not already done so by receipt of this Order, Vyvx shall file its revised maximum tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. Vyvx is subject to access charges pursuant to Commission Order No. 86-584.

6. With regard to any future switched services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. Vyvx shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Vyvx changes underlying carriers, it shall notify the Commission in writing.

8. With regard to the origination and termination of toll

calls within the same LATA, Vyvx shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

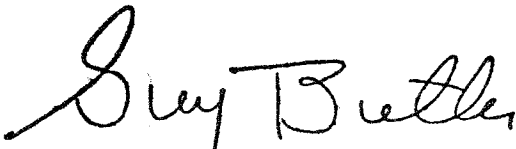
9. Vyvx shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

10. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Vyvx shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Attachment B shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

11. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

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ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

* THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.

* THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT
(SEE #3 ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE

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ATTACHMENT B

INFORMATION OF THE AUTHORIZED UTILITY REPRESENTATIVES
FOR INTEREXCHANGE, LOCAL AND AOS COMPANIES

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and
maintain with the Commission the name, title, address, and
telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by

Signature

If you have any questions, contact the Consumer Services
Department at 803-737-5230